

§ 736.81

7 CFR Ch. VII (1–1–00 Edition)

under those Acts respectively; otherwise the appeal, including fees shall be governed by §§ 736.81 through 736.83.

§ 736.81 Request for appeal.

A request for an appeal inspection by a depositor or holder of receipt must be made by written notice to the warehouseman before the identity of the lot of grain has been lost and not later than the close of business on the first business day following furnishing of the statement of original grade or if the appeal is requested by the warehouseman, notice must be given promptly to the owner of the grain. Oral notice may be made if followed by written notice. Where it is not practical for a warehouseman to maintain the identity of all grain being received for storage until depositors receive a statement of grade and consequently opportunity for appeal, any depositor or his agent before or at the time of delivery of his grain may request the warehouseman to retain the identity of such lot until said depositor has been furnished with a statement of grade for the lot and has waived or requested and received an appeal inspection grade. The warehouseman need not preserve the identity of the lot in the original carrier; but with the knowledge and consent of the depositor or agent may use other means to preserve such identity. Further, if compliance with such request would adversely affect receiving, storing or delivering the grain of other depositors, the warehouseman may defer unloading such grain until such time as would not disrupt service to other depositors but without unnecessary delay to the party making such request.

§ 736.82 Appeal sample—obtaining, preservation, delivery and examination.

(a) The lot of grain for which an appeal is requested shall be resampled in such manner and quantity as the depositor or holder of receipt and the warehouseman agree results in a representative sample of the lot acceptable to each for appeal purposes. Should they be unable to agree on such a sample, a sample drawn by a duly licensed inspector in the presence of both shall be deemed binding. In no

case shall the sample be of less than 2000 grams by weight.

(b) The sample shall be packaged, to the satisfaction of the interested parties, so as to preserve its original condition.

(c) For grains for which there are official U.S. Standards the sample shall be secured and delivered to the nearest office charged with providing official inspection service under the U.S. Grain Standards Act and/or the Agricultural Marketing Act of 1946. At this point procedures as set forth in regulations issued under the U.S. Grain Standards Act or under the Agricultural Marketing Act of 1946 shall govern. For grain for which there are no official U.S. Standards the party requesting the appeal shall apply directly to the Administrator for relief. The Administrator or delegate thereof shall promptly determine the appeal based on approved standards and set the required fees. Such determination shall be binding on all concerned parties.

(d) The sample shall be accompanied by: (1) A copy of the written request for appeal, (2) the grain inspection certificate originally issued, and (3) an agreement to pay the costs of such inspection as prescribed by the U.S. Grain Standards Act, the Agricultural Marketing Act or the Administrator.

(e) The sample of the grain involved in the appeal shall be examined as soon as possible. Such tests shall be applied as are necessary; and, unless the appeal is dismissed, a grade certificate shall be issued by the person determining the grade, showing the grade assigned by him to such grain. This certificate shall supersede the inspection certificate originally issued for the grain involved. The original or a copy of the new grade certificate shall be sent to the depositor or holder of receipt, the licensed warehouseman and the licensed inspector making the original determination of grade.

§ 736.83 Dismissal of appeal.

The departmental agency to whom the appeal has been made may dismiss such appeal without its determination upon request of the party initiating the appeal or for noncompliance with the regulations in this part.